

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DAVID ROBERT BUSWELL,

Petitioner,

v.

CIVIL ACTION NO. **3:08CV568**

WAYNE PHILLIPS,

Respondent.

MEMORANDUM OPINION

Petitioner was convicted in this Court, and sentenced on September 12, 2007. *See United States v. David Robert Buswell*, 3:07-cr-065. On July 18, 2008, he filed a 28 U.S.C. § 2241 petition in the Northern District of West Virginia. On August 25, 2008, that court denied his claims insofar as they related to § 2241, and transferred the petition to this Court for consideration of whether petitioner's challenges to his conviction and sentence should be construed pursuant to 28 U.S.C. § 2255.

A motion pursuant to 28 U.S.C. § 2255 provides the primary means of collateral attack on the imposition of a federal conviction and sentence. *See Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (*quoting Cox v. Warden, Fed. Det. Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990)). If Petitioner wishes to invoke this Court's jurisdiction under 28 U.S.C. § 2255, he must do so unequivocally and in accordance with the rules governing such actions. *Cf. Castro v. United States*, 540 U.S. 375, 383 (2003) (requiring district courts to advise inmates of the consequences of filing a Section 2255 motion prior to construing a mislabeled postconviction motion as one filed pursuant to that section). Any motion under 28 U.S.C. § 2255 must conform to the requirements imposed by the rules governing such motions, and be sworn to under penalty of

perjury. *See* Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 2(b).

The Court will process a request for relief under 28 U.S.C. § 2255 only upon receipt from Petitioner of the properly completed forms seeking such relief. No further action will be taken upon the present motion for relief pursuant to 28 U.S.C. § 2241.

This action will be dismissed without prejudice.

An appropriate order shall issue.

/s/
James R. Spencer
Chief United States District Judge

Date: 10-14-08
Richmond, Virginia